IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Senator RICHARD BLUMENTHAL, Representative JERROLD NADLER, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States of America,

Defendant.

Civil Action No. 17-1154 (EGS)

PLAINTIFFS' SURREPLY IN OPPOSITION TO DEFENDANT'S MOTION FOR A STAY

President Trump's motion for a stay identified no legal standard for granting that relief, *see* Mot. 19-21 (Dkt. No. 71-1), and his reply brief now argues that the standard Plaintiffs discussed in their opposition is "plainly inapplicable here," Reply 2 (Dkt. No. 77). Inexplicably, the President does not acknowledge that the standard he now claims is "erroneous[]" and "plainly inapplicable," *id*. at 1-2, is the same standard he recently cited as the applicable one in the same situation in a similar case. *See* Mot. at 25, *District of Columbia v. Trump*, No. 17-1596 (D. Md. Aug. 17, 2018) (Dkt. No. 127) (citing *Nken v. Holder*, 556 U.S. 418 (2009), as providing the applicable test); Mot. at 30, *In re Donald Trump*, No. 18-2486 (4th Cir. Dec. 17, 2018) (Dkt. No. 3-1) (same). The only explanation for this change in position is that the President now realizes he cannot satisfy the stringent *Nken* test.

The President is also wrong. To start, while the President characterizes his motion as a general request to stay "proceedings," he is obviously seeking to stay the effect of this Court's orders denying his motion to dismiss. "[T]he operation and effect of [those] orders," *Wisc. Gas*

Co. v. FERC, 758 F.2d 669, 672 (D.C. Cir. 1985), is to initiate discovery, *see, e.g.*, Standing Order ¶ 9(a) (Dkt. No. 12), and this "operation and effect" is precisely what the President seeks to stay. Moreover, the authority to stay proceedings described in *Landis v. North American Co.*, 299 U.S. 248, 255 (1936), is used primarily in situations where *independent* proceedings bear on a case's outcome. *See Fonville v. District of Columbia*, 766 F. Supp. 2d 171, 172 (D.D.C. 2011) ("A trial court has broad discretion to stay all proceedings in an action pending the resolution of *independent proceedings elsewhere*." (emphasis added)). That was true in *Landis* and in nearly every case the President cites. By contrast, where a party seeks to stay the effect of an order pending appeal of that order, "the traditional stay factors" apply. *Nken*, 556 U.S. at 426.

In any event, a stay is unwarranted even under *Landis*. For the same reasons discussed in Plaintiffs' opposition, the President has not "ma[d]e out a clear case of hardship or inequity in being required to go forward," nor has he satisfied his "burden of making out the justice and wisdom of a departure from the beaten track." *Landis*, 299 U.S. at 255-56. The *Landis* standard, if anything, expands this Court's discretion, and the Court should not use that discretion to give the President *de facto* immunity for his constitutional violations by delaying resolution of this case.

Dated: June 3, 2019

Respectfully submitted,

/s/ Brianne J. Gorod
Brianne J. Gorod

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